
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

GERALD ALLEN PERRY,

Plaintiff,

versus

LANNETTE LINTHICUM, *et al*,

Defendants.

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CIVIL ACTION NO. 1:07-CV-149

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Gerald Allen Perry, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the lawsuit. The magistrate judge recommends the lawsuit be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received the Report and Recommendation, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

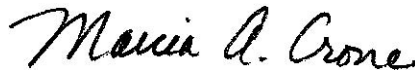
The magistrate judge's recommendation was based on his conclusion that at least three prior cases or appeals filed by plaintiff were dismissed as frivolous or for failure to state a claim upon which relief may be granted. In his objections, plaintiff states that the court erred when it dismissed one of his prior cases as frivolous. However, the doctrine of *res judicata* prevents

plaintiff from relitigating the determination that one of his prior cases was frivolous. *Kinnell v. Graves*, 265 F.3d 1125, 1128 (10th Cir. 2001). Plaintiff's objection is therefore without merit.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing this lawsuit.

SIGNED at Beaumont, Texas, this 20th day of April, 2007.

A handwritten signature in cursive script, reading "Marcia A. Crone".

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE